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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA COURIER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Application for Review of Telco Communications Group, Inc.

Dear Mr. Caton:

Enclosed for filing please find an original and four (4) copies of the Application for Review of Telco Communications Group, Inc. on behalf of its operating subsidiaries, pursuant to Section 1.115 of the Commission's Rules, CC Docket No. 96-128. Also enclosed is an extra copy to be stamped and returned.

Please direct any questions you may have regarding this filing to the undersigned of this office.

Respectfully submitted,



Dana Frix
Pamela Arluk

Its Counsel

cc: Attached Service List
Bryan Rachlin
Michael Romano

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 15 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the) CC Docket No. 96-128
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

APPLICATION FOR REVIEW
OF TELCO COMMUNICATIONS GROUP, INC.

Telco Communications Group, Inc., on behalf of its operating subsidiaries ("Telco"), pursuant to Section 1.115 of the Federal Communications Commission's ("Commission") rules, 47 C.F.R. §1.115, hereby seeks reversal of the Common Carrier Bureau's ("Bureau") Order released April 15, 1997, in the above-referenced docket.¹ The Bureau's *Second Waiver Order* violates the Commission's Payphone Orders by permitting LECs to receive interim compensation prior to fully complying with the Commission's requirements for implementing its payphone regulatory scheme.

Telco has expressed a strong interest throughout the Commission's efforts to deregulate the payphone marketplace in accordance with Section 276 of the 1996 Telecommunications Act ("1996 Act"). Telco has submitted comments to the Commission regarding the comparably efficient interconnection ("CEI") plans filed by Bell Atlantic, NYNEX, Southwestern Bell, U S West, Pacific Bell and Nevada Bell as requested by earlier orders in this docket.² Moreover, Telco has recently

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-805 (rel. Apr. 15, 1997) ("*Second Waiver Order*").

² *See, e.g., Comments of Telco Communications Group on Bell Atlantic's CEI Plan*, CC Docket No. 96-128 (filed Feb. 7, 1997). Comments on the CEI plans filed by

applied for review of the previous *Waiver Order* by the Bureau in this docket, which permits the Regional Bell Operating Companies ("RBOCs") and other local exchange carriers ("LECs") to receive flat-rate interim compensation from interexchange carriers ("IXCs") for payphone services starting April 15, 1997, even though the LECs will not have filed federal tariffs complying with the Commission's orders in this docket until one month later.³

In this filing, Telco again raises concerns about the Bureau's decision to grant a "limited waiver" to LECs that permits them to receive a substantial amount of funds under the Commission's interim flat-rate compensation mechanism without complying with the carefully designed schedule promulgated in the *Payphone Order*⁴ and reaffirmed in the Commission's *Reconsideration Order*⁵ in this docket. By virtue of the *Second Waiver Order*, the LECs will be able to collect compensation without filing intrastate tariffs that meet the "new services" test as mandated by the Commission in prior orders in this docket.⁶ Permitting LECs to collect substantial revenues from IXCs such as Telco

Southwestern Bell, NYNEX and U S West were also filed on February 7, 1997. Comments on the CEI plan of Pacific Bell and Nevada Bell were filed on February 12, 1997.

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-678 (rel. Apr. 4, 1997) ("*First Waiver Order*"), at ¶21.

⁴ *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("*Payphone Order*").

⁵ *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("*Reconsideration Order*"), at ¶131.

⁶ The "new services" test requires that each tariff filing submitted by a LEC that "introduces a new service or a restructured unbundled service element (BSE) that is or will later be included in a basket must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's

before the LECs have fully complied with the Commission's review process only undermines the Commission's attempt -- and the Congressional mandate -- to "promote competition among payphone service providers."⁷ Therefore, the Commission must reverse the Bureau's decision by prohibiting the LECs from receiving interim compensation until their intrastate tariffs reflect full compliance with the new services test.

I. THE COMMISSION HAS CLEARLY STATED THAT INTRASTATE LEC TARIFFS MUST COMPLY WITH THE NEW SERVICES TEST BEFORE A LEC WILL BE ELIGIBLE TO RECEIVE COMPENSATION UNDER THE FLAT-RATE PAYPHONE COMPENSATION MECHANISM

On April 10, 1997, a coalition of RBOCs petitioned the Commission for a limited waiver to extend the intrastate tariff filing deadline from April 15, 1997 to May 19, 1997. These petitioners claimed that not one of them had "understood the payphone orders to require existing, previously-tariffed intrastate payphone services . . . to meet the Commission's new services test."⁸ In granting the request of the RBOC Coalition, the Bureau concluded that "while the individual BOCs may not be in full compliance with the intrastate tariffing requirements of the *Payphone Reclassification Proceeding*, they have made a good faith effort to comply with the requirements."⁹ Therefore, the Bureau waived the requirement that intrastate tariffs be in compliance with the new services test by April 15, 1997. As a result, LECs will be eligible to receive compensation under the Commission's

overhead costs." See 47 C.F.R. § 61.49(g)(2) (1996).

⁷ 47 U.S.C. § 276(b)(1) (1996); *Payphone Order*, at ¶2.

⁸ *Second Waiver Order*, at ¶14 (quoting *Ex Parte* Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 11, 1997)).

⁹ *Second Waiver Order*, at ¶18.

flat-rate mechanism beginning April 15, 1997 before it is determined whether they are in fact in compliance with the new services test at all.

As in the case of the *First Waiver Order*, the Bureau has ignored the Commission's intent in designing a balanced schedule for the deregulation of payphone services. In its *Payphone Order*, the Commission highlighted the problems that would arise if the RBOCs and other LECs were permitted to receive funds under the interim flat-rate compensation mechanism without competitive safeguards. In that Order, the Commission commented:

LEC participation both in providing payphones to the public and also providing the underlying tariffed payphone services to independent PSPs may give LECs the incentive and the potential ability to unfairly act to the detriment of their PSP competitors and to act in other anticompetitive ways against PSPs. However, *by implementing safeguards*, we intend to *ensure* that LECs cooperate fully in the provision of any necessary payphone services and do not otherwise restrain competition, as long as LECs remain the monopoly providers of these services.¹⁰

These anticompetitive ramifications led the Commission to state clearly on the record that great care was warranted in allowing LECs to participate in the flat-rate compensation mechanism. In the *Reconsideration Order*, the Commission specifically noted that in establishing the flat-rate mechanism, "We must be cautious, however, to ensure that LECs comply with the requirements set forth in the [*Payphone Order*]."¹¹ Allowing LECs to recover interim compensation prior to demonstrating compliance with the new services test is contrary to the Commission's explicit warning to remain "cautious" in permitting RBOCs and other LECs to receive compensation like other payphone service providers ("PSPs").

¹⁰ *Payphone Order*, at ¶14 (*emphasis added*).

¹¹ *Reconsideration Order*, at ¶131.

The Commission did not delegate oversight of these tariffing requirements to the Bureau so that the Bureau could do away with them if it believes that the individual LECs have made "good faith" efforts to comply. The stark tone of caution in the *Reconsideration Order* makes clear that the Commission envisioned that the Bureau would police LEC compliance with the Commission's payphone regulatory scheme, rather than excusing failures to comply. Again, the Commission's own choice of terms reveals its intent: "LECs will be eligible for compensation like other PSPs when they have *completed the requirements* for implementing our payphone regulatory scheme"¹² The Bureau's action in this *Second Waiver Order* therefore contradicts the Commission's own language and contravenes the very purpose of imposing such tariff requirements in the first place. The Commission must reverse the Bureau's decision and make clear that the RBOCs and other LECs may only receive substantial flat-rate compensation amounts from IXC's such as Telco after it has been determined that their intrastate tariffs comply with the new services test.¹³

II. IN AVOIDING COMPLIANCE WITH THE NEW SERVICES TEST BY FEIGNING IGNORANCE, THE RBOCs HAVE NOT ACTED IN GOOD FAITH

Telco objects to the Bureau's finding that the RBOCs have made "good faith" efforts to comply with the new services test and other tariff requirements. The RBOCs' blatant avoidance of compliance with the new services test in the context of this proceeding should dispel any notions of good faith on their part. While the RBOCs claim that they did not understand that the new services

¹² *Id.* (emphasis added).

¹³ As Telco noted in its earlier challenge to the *First Waiver Order*, from April 15 to November 7, 1997, it will be responsible for paying **an estimated \$2 million** if the approximately 1.5 million LEC-owned payphones are included in the flat-rate compensation mechanism. Absent a waiver to compensate payphone owners on a per-call basis (Telco has filed such a waiver), Telco's per month responsibility would be approximately \$271,571.49.

test would apply to existing intrastate tariffed services, the Commission effectively clarified the scope of the requirement in the *Reconsideration Order*. The Commission stated in that order, “[W]e have deregulated payphone equipment and established a requirement that LECs provide tariffed payphone services to independent payphone providers that they provide to their own payphone operations.”¹⁴

The Commission continued,

LECs *must file intrastate tariffs* for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. *States must apply these requirements and the Computer III guidelines for tariffing such services.*¹⁵

Significantly, the FCC stated in footnote 492 to this paragraph that the “new services test required in the *Report and Order* is described at 47 C.F.R. Section 61.49(g)(2).”¹⁶ It is clear from the Commission’s concerned discussion about the removal of subsidies from existing tariffs that the Commission intended that LECs would file intrastate tariffs for their payphone services that comply with the requirements set forth in the paragraph quoted above, including the new services test. Given the *Reconsideration Order*’s express direction that the Commission expects LECs intrastate tariffs to comply with the new services test and other competitive safeguards, the RBOCs’ claim that they misunderstood the application of the new services test cannot be found to constitute “good faith.” The Commission must therefore reverse the Bureau’s decision to waive LEC compliance with the

¹⁴ *Reconsideration Order*, at ¶162.

¹⁵ *Id.*, at ¶163 (*emphasis added*).

¹⁶ *Id.*, at ¶163, n.492.

new services test until May 19, 1997.

III. CONCLUSION

For the foregoing reasons, Telco urges the Commission to reverse the Bureau's decision to allow the LECs to receive interim compensation from the interexchange carriers before their intrastate tariffs comply with the new services test. As demonstrated above, the Bureau's decision does not conform with the Commission's own statements on this issue nor the policy rationales underlying the Commission's Orders in this docket. The RBOCs and other LECs must not be allowed to receive funds under the interim flat-rate compensation mechanism until their tariffs comply with all requirements imposed by the Commission in this docket.

Respectfully submitted,



Dana Frix
Pamela S. Arluk
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Counsel for
TELCO COMMUNICATIONS GROUP,
INC. AND ITS OPERATING
SUBSIDIARIES

Dated: May 15, 1997

CERTIFICATE OF SERVICE

I, Jeannine Allen, hereby certify that on this 15th day of May, 1997, a copy of the foregoing **Application for Review of Telco Communications Group, Inc., CC Docket No. 96-128**, was served on each of the following parties via courier, or by first-class mail, postage prepaid (as denoted by asterisk):

Regina M. Keeney
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Mary Beth Richards
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Janice M. Myles
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037

Michael K. Kellogg*
Jeffrey A. Lamken
Kevin J. Cameron
Kellog, Huber, Hanson, Todd & Evans
1301 K Street, N.W., Suite 3000W
Washington, D.C. 20005

Mark C. Rosenblum*
Ava B. Kleinman
Seth S. Gross
AT&T Corp.
Room 3252J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Mary J. Sisak*
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Albert H. Kramer*
Robert F. Aldridch
David M. Janas
Dickstein, Shapiro, Morin &
Oshinsky, LLP
2101 L Street, N.W., Suite 800
Washington, D.C. 20027


Jeannine Allen